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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/632,747	04/16/95	YOCK	P CVDINC.040FW

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33M1/0205

EXAMINER

ART UNIT PAPER NUMBER

3305

25

DATE MAILED: 02/05/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-23 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

- ☐ Claims _____ have been cancelled.
- ☐ Claims _____ are allowed.
- ☒ Claims 1-23 are rejected.
- ☐ Claims _____ are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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The reissue oath or declaration filed with this application is defective because it fails to particularly specify how the errors relied upon arose or occurred, as required under 37 C.F.R. 1.175(a)(5).

The six claims of the original patent are drawn to an apparatus for use in cannulation of blood vessels. Applicants, in their original declarations, have specified several insufficiencies in these claims, but have not shown how seventeen new claims rectify the "errors" in the original claims. While applicants are correct in their assessment of the basic rule requirements (as per remarks in Paper No. 13 in parent S.N. 07/808,751), further information should be supplied as set forth in the decisions In re Wittry, 180 USPO 320 (requires that applicants assert a difference in scope between the original and any added claims) and In re Constant, 3 USPO 2d 1479, (every departure from the original claims is an "error" which must be described in the declaration).

Claims 1-23 are again rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 C.F.R. 1.175.

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Additionally, applicants have added claims to inventions not claimed in the original application, e.g., a kit and a method for guiding a needle. The declaration should at least establish reasons for consideration of this subject matter as part of the same invention since these claims if they had been presented during the original prosecution would have been restrictable as not for the same invention. Reasons why this subject matter was not earlier claimed and is otherwise not restrictable cannot be found in the original declarations. Applicants remedy may be in the form of a declaration from the previous attorney under 37 C.F.R. 1.175(b).

Claims 14, 15 and 23 are again rejected under 35 U.S.C. 251 as being not for the same invention as claimed in the patent.

This is a continuation of applicant's earlier application S.N. 07/808,751. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

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A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Francis J. Jaworski whose telephone number is (703) 308-3061. The examiner can normally be reached on weekdays from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin Lateef, can be reached on (703) 308-3256.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858. The fax phone number for this Group is (703) 305-3590.

FJJ:fjj

1-31-97


FRANCIS JAWORSKI
PRIMARY EXAMINER
ART UNIT 335